

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PRINCE BRELAND, ANNIE COLEMAN, and  
MAXIME DIATTA, individually and on behalf of  
all others similarly situated,

Plaintiff,

vs.

GEOFFREY ZAKARIAN, COUNTRY IN NEW  
YORK, LLC, ADAM BLOCK, 3SIXTY  
HOSPITALITY, LLC, MOSHE LAX, THE  
CARLTON HOTEL ON MADISON AVENUE  
and CARLTON HOTEL MANAGEMENT, LLC,

Defendant.

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Case No.: 08cv6120 (LAK) (DEF)

**ANSWER TO COMPLAINT AND  
AFFIRMATIVE DEFENSES**

3Sixty Hospitality, LLC, by way of Answer to the Complaint, hereby state,

**INTRODUCTION**

1. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in this paragraph and leaves plaintiffs to their proofs with regard to same.

2. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in this paragraph and leaves plaintiffs to their proofs with regard to same.

3. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in this paragraph and leaves plaintiffs to their proofs with regard to same.

4. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in this paragraph and leaves plaintiffs to their proofs with regard to same.

#### **JURISDICTION & VENUE**

5. This paragraph calls for a legal conclusion and cannot be admitted or denied.

6. This paragraph calls for a legal conclusion and cannot be admitted or denied.

7. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in this paragraph and leaves plaintiffs to their proofs with regard to same.

8. This paragraph calls for a legal conclusion and cannot be admitted or denied.

#### **THE PARTIES**

##### **THE NAMED DEFENDANTS**

9. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in this paragraph and leaves plaintiffs to their proofs with regard to same.

10. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in this paragraph and leaves plaintiffs to their proofs with regard to same.

11. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in this paragraph and leaves plaintiffs to their proofs with regard to same.

12. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in this paragraph and leaves plaintiffs to their proofs with regard to same.

13. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in this paragraph and leaves plaintiffs to their proofs with regard to same.

14. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in this paragraph and leaves plaintiffs to their proofs with regard to same.

### **DEFENDANTS**

15. Answering defendant denies the allegations contained in this paragraph.

16. Answering defendant denies the allegations contained in this paragraph.

17. Answering defendant denies the allegations contained in this paragraph.

18-39. Answering defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in these paragraphs and leaves plaintiffs to their proofs with regard to same.

40. Answering defendant admits the allegations contained in this paragraph.

41. Answering defendant denies the allegations contained in this paragraph.

42. Answering defendant denies the allegations contained in this paragraph.

43. Answering defendant denies the allegations contained in this paragraph.

44. Answering defendant denies the allegations contained in this paragraph.

45. a. Answering defendant denies this sub-paragraph.

b. Answering defendant denies this sub-paragraph.

c. Answering defendant admits that beginning on a fixed date, defendant provided some limited assistance in regulatory needs to Country.

d. Answering defendant admits that beginning on a fixed date, defendant provided some limited bookkeeping services to Country.

e. Answering defendant denies this sub-paragraph.

f. Answering defendant admits that beginning on a fixed date, defendant

provided some limited advice to Country as to “cost of goods sold management”.

g. Answering defendant denies this sub-paragraph, as overbroad.

46-53. Answering defendant denies the allegations contained in these paragraphs.

#### **CLASS ACTION ALLEGATIONS**

54-65. Answering defendant denies the allegations contained in these paragraphs.

#### **COLLECTIVE ACTION ALLEGATION**

66-69. Answering defendant denies the allegations contained in these paragraphs.

#### **CLASS-WIDE ALLEGATIONS**

70-71 Answering defendant denies the allegations contained in these paragraphs.

#### **FIRST CAUSE OF ACTION**

72. Defendant repeats and realleges the allegations as if fully set forth herein.

73-91. Answering defendant denies the allegations contained in these paragraphs.

#### **SECOND CAUSE OF ACTION**

92. Defendant repeats and realleges the allegations as if fully set forth herein.

93-94. Answering defendant denies the allegations contained in these paragraphs.

#### **THIRD CAUSE OF ACTION**

95. Defendant repeats and realleges the allegations as if fully set forth herein.

96. Defendant admits that the FLSA statute is quoted accurately, but denies that it is cited completely.

97. This paragraph calls for a legal conclusion.

98. This paragraph calls for a legal conclusion.

99-106. Answering defendant denies the allegations contained in these paragraphs.

#### **FOURTH CAUSE OF ACTION**

107. Defendant repeats and realleges the allegations as if fully set forth herein.

108. This paragraph calls for a legal conclusion.

109-113. Answering defendant denies the allegations contained in these paragraphs.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

##### **SECOND AFFIRMATIVE DEFENSE**

Defendant has conducted its practices in good faith and in accordance with all applicable statutes and regulations with regard to Plaintiffs. Defendant has not acted in bad faith or willfully or otherwise violated Plaintiffs' rights in any manner or acted maliciously with respect to any aspect of the events underlying the Complaint.

##### **THIRD AFFIRMATIVE DEFENSE**

Some or all of Plaintiffs' alleged claims are barred by his failure to exhaust administrative remedies.

##### **FOURTH AFFIRMATIVE DEFENSE**

Some or all of Plaintiffs' claims are barred by virtue of the equitable defense of the doctrine of laches.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred or limited from recovering damages based on his failure to mitigate said damages.

**SIXTH AFFIRMATIVE DEFENSE**

Some or all of Plaintiffs' injuries are due, in whole or in part, to their own actions.

**SEVENTH AFFIRMATIVE DEFENSE**

Some or all of Plaintiffs' alleged claims are barred by the applicable statutes of limitations.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to punitive damages.

**NINTH AFFIRMATIVE DEFENSE**

Some or all of the actions forming the basis of Plaintiffs' alleged claims were committed by individuals outside the scope of their employment and cannot be imputed to this Defendant as a matter of law.

**TENTH AFFIRMATIVE DEFENSE**

Defendant acted promptly and appropriately under the circumstances to remediate the situation.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff is barred or limited from recovering damages based upon the doctrine of after-acquired evidence.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrine of unclean hands.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Answering defendant did not participate in any of the alleged wrongdoing

**FOURTEENTH AFFIRMATIVE DEFENSE**

Answering defendant's only involvement with the subject restaurant post dates any of the alleged wrongful and or improper activity and plaintiffs' claims must be dismissed.

Dated: NEW YORK  
September 2, 2008

Respectfully Submitted,

GORDON & REES, LLP

By: 

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